DEPARTMENT OF THE NAVY
OFFICE OF THE GENERAL COUNSEL
720 KENNON STREET SE RM 214
WASHINGTON NAVY YARD DC 20374-5012

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

(b) (6)(b) (6)
President
(b) (6)

RE: PROPOSED DEBARMENT OF THE SIGMON GROUP

Dear (b) (6):

On behalf of the Department of the Navy, I am initiating a debarment action against The Sigmon Group, LLC, effective as of the date of this letter. Based on my review of the entire Administrative Record, which includes the enclosed "Memorandum for the Department of the Navy Suspending and Debarring Official," I find the facts to be as stated in the enclosed Memorandum, and I further find that the facts support causes to debar your firm. The causes and reasons for proposing debarment are also stated in the Memorandum, which I adopt and incorporate herein by reference.

The procedures governing debarment are stated in Subpart 9.4 of the Federal Acquisition Regulation (FAR), as supplemented by Subpart 209.4 and Appendix H of the Department of Defense FAR Supplement (DFARS). Copies of these regulations are enclosed with, and made a part of, this notice to you and your firm.

The immediate effect of being proposed for debarment is that the name of your firm will be published in the Excluded Parties List System ("the List"). The List is a publication of the General Services Administration that contains the names of contractors debarred, suspended, proposed for debarment, or declared ineligible by any

agency of the Federal Government. You may access the List on the Internet at http://www.epls.gov/.

As provided at FAR, Subpart 9.405 and at 32 Code of Federal Regulations, Part 25, the effects of being placed on the "List" are:

(1) Throughout the Executive Branch of the Federal Government, offers will not be solicited from, contracts will not be awarded to, existing contracts will not be renewed or otherwise extended for your firm, unless the head of the agency taking the contracting action, or a designee, states in writing a compelling reason to do so.

(2) No Government contractor may award a subcontract equal to, or in excess of, $25,000 to your firm, unless there is a compelling reason to do so and the contractor first notifies the contracting officer and further complies with the provisions of FAR 9.405-2(b).

(3) If your firm is proposed as a subcontractor for any subcontract subject to Government consent, no contracting officer of any Federal Executive Branch Agency shall give consent unless the acquiring agency's head or designee states in writing the compelling reasons for this approval action.

(4) Your firm is excluded from conducting business with the Government as an agent or representative of other contractors.

(5) Your firm is also excluded from participating in Federal nonprocurement activities such as programs and activities involving Federal financial and nonfinancial assistance and benefits.

Within thirty calendar days after receipt of this notice, you or a representative on behalf of your firm may submit, either in person or in writing, information and/or argument in opposition to the proposed debarment, in accordance with FAR 9.406-3(c)(4) and the standard

procedures enclosed with this notice. Written presentation of matters in opposition should be addressed to:

(b) (6)
ACQUISITION INTEGRITY OFFICE
OFFICE OF THE GENERAL COUNSEL
WASHINGTON NAVY YARD
720 Kennon Street, S.E., Room 214
Washington, D.C. 20374-5012

(b) (6)

If debarment is imposed, the name of your firm will be placed on the "List" as being debarred. Debarment shall remain in effect for a period commensurate with the seriousness of the causes as determined on the basis of the Administrative Record, which will include any information and argument you choose to submit.

Sincerely,

(b) (6)
Suspending and Debarring Official
Department of the Navy

Date: 9/24/07

(b) (6)

DEPARTMENT OF THE NAVY
OFFICE OF THE GENERAL COUNSEL
720 KENNON STREET SE RM 214
WASHINGTON NAVY YARD DC 20374-5012

12 September 2007

MEMORANDUM FOR THE DEPARTMENT OF THE NAVY SUSPENDING AND DEBARRING OFFICIAL

Subj: PROPOSED DEBARMENT OF THE SIGMON GROUP, LLC

INFORMATION IN THE RECORD:

On 26 March 2007, The Sigmon Group, LLC ("TSG"), via its president (b) (6)(b) (6) pled guilty to the two counts referenced in the Criminal Information (the "Information"), violations of Title 18, United States Code, Section 287, submitting false invoices. The Information noted that during the time period from approximately May 2001 through March 2003, TSG was performing work as a prime contractor on two time and materials contracts, No. N65538-02-F-0086 and No. N65538-01-F-0262, which required the installation of damage control systems on the USS Carl Vinson, CVN – 70, and the USS Dwight D. Eisenhower, CVN - 69, respectively. These contracts were awarded by the Department of the Navy, Naval Sea Logistics Center. During this time period, TSG was engaged in a scheme to defraud the Government whereby TSG prepared and submitted at least thirty-three invoices including approximately $643, 073.18 in "labor, material and travel costs purported to have been incurred by defendant [TSG] in the performance of [these] contracts, when in truth and fact, as the defendant [TSG] well knew, said invoices were false, fraudulent and fictitious, in that said labor costs had not actually been incurred by the defendant [TSG]".

Further, the Statement of Facts incorporated into the Plea Agreement notes "[A]s officers and employees of Sigmon knew, these invoices were false, fictitious and fraudulent in that they included a total of approximately [$642,073.18] in excess of the costs which Sigmon actually incurred in the performance of the contract."

On 5 April 2007, TSG and the Government entered into a Settlement Agreement and Release whereby the Government agreed to "refrain from instituting or maintaining any civil or administrative monetary claim against TSG for the conduct alleged in the Criminal Information..." TSG agreed to pay the Government $1,055,143.10 (of which $642,073.18 appears to be the restitution agreed to under the criminal Plea Agreement).

On 12 April 2007, at their request, the TSG met with the Department of the Navy ("DON") Suspending and Debarring Official ("SDO") to demonstrate their present responsibility and to present matters in opposition ("MIO") to their exclusion from Government procurement.

On 1 August 2007, in the United States District Court, Eastern District of Virginia, The Sigmon Group was sentenced to pay a fine of $750,000 (in addition to the restitution of $ 642,073.18 and the civil settlement amount of $ 413,069.920, as agreed upon in the Plea and Settlement Agreements), and to five years of supervised probation.

ANALYSIS:

The Federal Acquisition Regulation (FAR) provides, in pertinent part, that "[a]gencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only." FAR 9.402(a). The FAR further provides that "[d]ebarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy." Id. The FAR also mandates that in order to "be determined responsible, a prospective contractor must . . . [h]ave a satisfactory record of integrity and business ethics." FAR 9.104-1.

In order to effectuate these policies, the FAR provides that a contractor may be debarred for any of those causes stated in the FAR at Subpart 9.406-2. That regulation provides, in pertinent part, as follows:

> (a) The debarring official may debar a contractor for a conviction of or a civil judgment for --
> (1) Commission of fraud or a criminal offense in connection with -
> (i) Obtaining; [or]
> (iii) Performing a public contract or subcontract.
> (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; [or]
> (5) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

The information in the present record provides the requisite evidence to debar The Sigmon Group, LLC for the causes stated in FAR 9.406-2(a)(1), (3) and (5). These documents and the guilty plea/conviction of TSG serve as adequate evidence of participation by this business entity in criminal conduct in connection with the performance of one or more "public" contracts. Further, these actions demonstrate the willingness of this business to disregard legal duties and established business practices in furtherance of personal objectives. These actions indicate a lack of business integrity or business honesty that seriously and directly affect the present responsibility of TSG to participate in the United States Government procurement process. These causes, either collectively or individually, are serious enough to warrant debarment because they are based upon the willingness of TSG to engage in unethical and dishonest business practices involving contracts/subcontracts let by the United States.

MATTERS IN OPPOSITION:

As noted above, on 12 April 2007, TSG met with the SDO to discuss the company's present responsibility and the reasons that the guilty plea/conviction should not be held as a basis for their debarment from the Government procurement process. Prior to the meeting, on 9 April 2007, TSG submitted written matters in opposition and support of its claim of present responsibility. During the meeting, AIO requested assorted additional documents be provided by TSG. On 1 and 7 June 2007, in response to this request, TSG submitted additional documents. On or about 1 June 2007, AIO received from TSG, five boxes of copies of documents that TSG had earlier submitted to the Assistant U.S. Attorney in response to a subpoena. On 25 July 2007, TSG submitted a third package of matters in opposition and support of its present responsibility. All of this material has been reviewed prior to drafting the recommendation presented below.

TSG's MIO and present responsibility presentation is primarily based upon its argument, first presented to the contracting officer in the summer of 2003, and presented again to the SDO, that the misconduct to which it pled guilty was not fraud, rather it was merely an accounting anomaly or mistake. TSG contends that this mistake was the product of the ineptitude of its director of contracts (mischarging for labor hours) [Mr. D.F.] and/or malfeasance of one of its officers (mischarging for materials) [Mr. P.E.]. TSG advises that both have since left the company. TSG has alleged that the primary cause for the accounting errors was the failure of the director of contracts to notify the corporate staff that the contracts in question were "time and materials" vice "firm fixed-price" ("FFP") contracts.

In its several presentations, TSG has summarized its new control measures. It advises that it has added: its timekeeping system; floor checks; new employee orientation; monthly invoice reviews; material and travel accounting; centralized office spaces; monthly contract review meetings; new accounting system; company meetings; a hotline; a board of advisors; a compliance survey; an export compliance program; and, advanced training. The TSG present responsibility presentation also relies heavily upon its analysis of the 10 mitigation factors presented in the FAR (See FAR 9.406-1(a)). Further, TSG claims that it brought its "accounting problem" to the attention of the Government, that it fully cooperated with the Government while conducting its own investigations, and that TSG has agreed to pay all fines, etc. assessed against it.

With regard to the mischarging of labor hours:

It is TSG's position that the mischarging of labor hours was merely a mistake. TSG alleges that had the director of contracts advised management that the contracts in question were time and materials, the responsible corporate officers/employees would not have mistakenly overstated the labor hours. This position is not supported by the

information in the record. [The information in the record includes: invoices; invoice summaries; labor distribution work sheets; time sheets; PES rates; discovery documents (*in re* Phil Embree v. TSG, United States District Court, South Carolina, Charleston Division, CA No. 2 03 2648 23, circa 2005); meeting transcripts; emails (with attachments); internal memoranda; timesheets; and assorted corporate work-papers, etc.]

Initially, it is significant to note that the "improper activity" that the company pled guilty to covered the period 2001 through March 2003 (see discussion below regarding TSG MIO factor # 10 and its acceptance of responsibility for misconduct limited to 2001 – 2002), and, that nowhere in TSG's twenty some pages of its primary matters in opposition, dated 9 April 2007, does it discuss, analyze or fully acknowledge the knowing and intentional participation of (b) (6) and (b) (6) and (b) (6) in the misconduct. This was noticed by the SDO who inquired about it during the 12 April 2007 meeting by asking two questions: the first regarding "which officers and employees knew that the invoices were false, fictitious and fraudulent" (from the Plea Agreement/Information, Statement of Facts) and "who was (b) (6) and what did he do to merit punishment/sanctions by the company?" In response to the first, (b) (6) said that when TSG signed the Plea Agreement, they interpreted this statement to mean that the officers and employees didn't actually know about the fraud but rather, that they should have known about the fraud. (b) (6) did not provide any names or titles. In response to the inquiries regarding (b) (6) position and implication in the MIO, (b) (6) related that (b) (6) the senior person in the damage control division "was trying to judge our costs to the amount of invoices each month so that they were more like a firm, fixed price or a progress type of billing. He knew if we worked 500 man hours, the associated cost of that, and then he would use the labor categories on the jobs where he thought that people were working, and that's how the invoices would be developed from that." (Emphasis added.)

Further insight into the "cost" referred to by (b) (6) in the preceding quote are provided by information obtained during the discovery phase of the civil litigation, Embree v. TSG, *supra*, and verified by other sources (the TSG L.L.C. Operating Agreement). It is apparent that (b) (6) was never paid a salary. He was paid for his hours worked on each contract just as were (b) (6) and the majority of the other "members" of the L.L.C.

Billing Rates:

The information in the file clearly indicates that TSG developed its own billing rates for employees in the damage control division. TSG would determine the total cost they wanted to recoup by multiplying their rate by the employees' full-time hours (see also discussion below regarding labor hours charged and vacation absences). TSG would then bill hours to the contract so that the hours per labor category multiplied by the contract labor rate was more than the total cost they wanted to recoup. For example, for the CVN-69 in December 2001, TSG wanted to receive $ 18,480 for (b) (6)(b) (6) (b) (6)(b) (6) TSG billed the desired 528 hours (3 x 176) as 84 hours at the Sr. Engineer rate, 168 hours to the Master Tech rate, and 300 hrs. at the Sr. Tech rate.

The total hours actually billed was 552. The total labor billed was $ 22,698.72. This methodology allowed (b) (6) to be billed out at $ 86.00, the rate of a program manager (reference the CVN – 70 rates). The CVN-69 contract did not require the services of a program manager and therefore did not have a program manager labor category. However, it appears that TSG would simply increase the number of hours billed to obtain the difference between the contract rates and the $ 86.00 program manager rate. This method is evinced in emails (dated approximately 3 through 6 January 2002, from (b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6)(b) (6) in which (b) (6) provided a spreadsheet ("DC DIV BILLINGS FOR DECEMBER BY PROJECT") (herein "labor distribution worksheet") and guidance to (b) (6), the CFO. (b) (6) then created, or had created, the December 2001 invoice at issue in the guilty plea.

The scheme is further clarified in a 3 January 2002 email from (b) (6)(b) (6) to (b) (6) "(b) (6) I billed your normal 174 hours for PMS 312L [carrier logistics program] for December. How did you want to work the 176 hours you have for DC [damage control] in December." It appears then, that for December of 2001, (b) (6) billed 174 hours for the carrier logistics project and then an additional 176 hours for the DC division, for a projected "distribution" for 350 hrs for December 2001. See also (b) (6) deposition, page 177, et seq., *in re* Embree v. TSG, *supra*.)

Vacation Time:

The information in the Record also indicates that, with the exception of December 2001, which was billed at 176 hours, TSG billed 174 hours (1/12 of 2080 annual hours) direct to the damage control contracts each month, regardless of the actual hours incurred. The 174 hours included time for holidays, leave, training, etc. Since the contracts were T&M, the cost of indirect labor, as well as profit, were included in the fixed labor rates. The revised timesheets (sent to employees and managers in 2003 to create a record of actual hours worked during the period of misconduct, to justify its revised invoices and in preparation for litigation) show the leave schedules of employees in the DC Division for the period December 2001 through July 2002. For example, two employees: (b) (6) and (b) (6) took significant leave in April – six days and five days, respectively. Yet, they were both billed at 174 hours for April 2002.

Firm Fixed-Price or Time & Materials?:

TSG argues that the causes for their criminal plea/debarment were simply accounting anomalies that arose because the director of contracts neglected to inform the company staff that the contracts in question were "time and materials" instead of the company norm – "firm fixed-price" contracts. However, at no time during the 12 April meeting, nor anywhere in its several written presentations, before and after the meeting, does TSG address how its accounting methods, were in accordance with generally accepted accounting practices for FFP contract invoices presented to the Government. TSG did not explain how its practice of manipulating the reporting of the labor hours expended by its employees, a scheme to develop and utilize TSG's billing rates – not

those provided for in the contract - was acceptable under a FFP. Nor does TSG explain how billing the Government for hours not worked, either due to employee vacations or to simply over-billing, was acceptable under FFP. From the information in the Administrative Record it appears that TSG failed to address these procedures because the methodologies utilized by TSG were not acceptable under either T&M or a FFP contracts. It also appears that the knowing utilization of these methodologies by the officers and employees at TSG was likely the basis's for the guilty plea in question.

Mitigation Factors:

TSG also takes the position that it is a presently responsible company because, in response to this criminal matter, it has: revised its previously inadequate standards of conduct and internal control systems; instituted a hotline; and, created new positions to include oversight of business administration and operations. TSG notes that "They [new management hires in business administration and operations] bring a fresh perspective to management and work closely with (b) (6) [president] and (b) (6) [vice president], who completely understand and recognize the gravity of TSG's misconduct."

As noted above, the TSG presentation also relied substantially upon its analysis of the application of the 10 "mitigating" factors in FAR 9.406-1(a). However, for reasons that will be discussed below, the presentation of the 10 mitigating factors was generally lacking in relevant substance. Specifically, a close analysis of three of the factors will demonstrate the significant difference in perception of the misconduct: one as offered by TSG and another as revealed by a review of the information in the record.

In its efforts to demonstrate its present responsibility, TSG relied upon mitigation factor "**(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.**" TSG offered that in response to the misconduct for which it pled guilty it "took" action against five individuals:

(b) (6) --- former "member" (officer, partner) of TSG, former V.P. Damage Control and Research and Development, status: "resigned 10 June 2003";

(b) (6) -- - former director of contracts, status: "resigned in October 2003, replaced by two managers "to elevate contract administration in TSG's operationally oriented management";

(b) (6)(b) (6) Senior V.P., Logistics and Maintenance and Damage Control Divisions, "member" of TSG, status: "relieved of all operational control and involvement in billing and timekeeping and shifted to a business development role only, still the Senior V.P.;

(b) (6)(b) (6) --- CEO and President, founder, member of TSG, status: still president, increased his member share of profits by receipt of that relinquished by resignation of (b) (6)(b) (6), also suffered damage to professional reputation, embarrassment, mental anguish; and,

(b) (6)(b) (6) --- former member of TSG; former CFO of TSG, status: resigned as "partner"/member and CFO of TSG and was immediately rehired as an "employee" of the company. (NB: The replacement CFO appears to be (b) (6)(b) (6), the son of (b) (6)(b) (6))

A review of the MIO in their entirety indicates clearly that TSG has placed the weight of the blame for the misconduct, and the weight of its "appropriate disciplinary action" upon the two individuals, (b) (6)(b) (6)(b) (6)(b) (6), who are, voluntarily, no longer with the company.

TSG also relied upon mitigation factor "(9) **Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.**" TSG offered that it has worked to eliminate the circumstances that gave rise the misconduct through personnel changes (mainly two new hires) and training, etc. In the opinion of the undersigned, there has been adequate time to effect substantive changes at TSG, if the company recognizes and understands the seriousness of its misconduct, accepts the responsibility for the misconduct, and allows that realization to direct its focus and corrective actions.

And, finally, TSG relied upon mitigation factor "**(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.**" TSG offers "[S]hortly after its shortcomings came to light [no date provided], TSG created the positions of Director of Business Administration and Vice President of Operations, which currently are held by (b) (6) and (b) (6) They bring a fresh perspective to management and work closely with (b) (6) and (b) (6), who completely understand and recognize the gravity of TSG's misconduct. Although TSG does not bear (b) (6) name, he takes great pride in being a part of the company and has felt disciplined greatly in the hardship and learning that he has been a part of since the improper activity in 2001-2002." (Note: see also the discussion above, TSG pled guilty to misconduct extending from December 2001 through March 2003.) A review of the information submitted reveals that TSG has instituted many new programs. However, the core of its "leadership" remains much as it was during the period of "knowing" and "intentional" misconduct. Accordingly, the programs implemented can at best be viewed as mere accessories, rather than the substantial changes necessary to eliminate the circumstances that gave rise to the TSG misconduct.

SUMMARY:

As noted above, TSG has based its present responsibility presentations upon the premise that its accounting anomalies were due to the ineptitude of its director of contracts who neglected to advise the company that the contracts in question were Time and Materials vice FFP. After a review of the information in the Administrative Record, the "T & M" v. FFP argument, for practical purposes, merely presents a distinction

without a difference. The labor hour accounting and billing practices of TSG were not acceptable for either T&M or FFP.

Finally, a review of the information in the Administrative Record reveals that the documents that establish these patterns of misconduct also demonstrate that, in addition to (b) (6) (b) (6)(b) (6) and (b) (6)(b) (6) were either originators of, direct recipients of, or info copied on, all relevant documents/emails/conversations.

It is clear then that (b) (6)(b) (6) and (b) (6) and (b) (6) were heavily involved in the labor mischarging activity that formed the basis of the guilty pleas and conviction of TSG. It is also apparent that TSG has chosen to rehabilitate its company by adding additional controls and processes – by adding to its personnel without significantly impacting its core of longtime, key management. This response demonstrates that either TSG has no clear focus on the circumstances that gave rise to the misconduct or that TSG misunderstands the seriousness of the acts that led to its conviction/causes for debarment, or both. In light of the years that have passed since the misconduct was "discovered" and the seriousness of the established causes for debarment, the overall response of TSG, as set out in its presentations, etc., is inadequate to demonstrate its present responsibility to do business with the Government.

CONCLUSION:

As is noted above, the information in the Administrative Record clearly presents causes for the debarment of TSG. The Administrative Record demonstrates that TSG has pled guilty to, and been convicted of, fraudulent activity and business-related crimes that affect its responsibility as a Government contractor. The criminal violations to which it has admitted culpability indicate that it lacks the business honesty and integrity necessary to do business responsibly with the Federal Government.

However, TSG has submitted volumes of documents and arguments to establish that it is presently responsible and that it should not be debarred from Government procurement because of its felony conviction. In a situation such as this, the Defense Federal Acquisition Regulations Supplement ("DFARS") at 209.406, Debarment, provides guidance:

> 209.406-1 General.
> (a)(i) When the debarring official decides that debarment is not necessary, the official may require the contractor to enter into a written agreement which includes—
>
> > (A) A requirement for the contractor to establish, if not already established, and to maintain the standards of conduct and internal control systems prescribed by Subpart 203.70; and
> > (B) Other requirements the debarring official considers appropriate.

(ii) Before the debarring official decides not to suspend or debar in the case of an indictment or conviction for a felony, ***the debarring official must determine that the contractor has addressed adequately the circumstances that gave rise to the misconduct, and that appropriate standards of ethics and integrity are in place and are working.*** (Emphasis added.)

In the present matter, TSG has not enabled the SDO to make the requisite determination. TSG's presentations are insufficient to establish that it has "adequately addressed the circumstances that gave rise to the misconduct, and that appropriate standards of ethics and integrity are in place and are working". Consequently, TSG's efforts to date are inadequate to establish that it is a presently responsible contractor.

Therefore, TSG should be debarred to protect the interests of the Government. This debarment is necessary to protect the integrity of the procurement system. The causes for debarment presented by the facts in the Administrative Record and by TSG's admission of guilt to fraud and criminal business practices and relied upon to debar TSG are FAR 9.406-2(a)(1), (3) and (5).

RECOMMENDATION:

That you sign the enclosed letter notifying (b) (6)(b) (6) that the Department of the Navy is placing his company, The Sigmon Group, LLC on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" as being proposed for debarment.

(b) (6)

Associate Counsel
Acquisition Integrity Office